

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

|  |   |
|--|---|
| <b>LRB'S COUNTRY ROAD HOUSE,<br/>LLC, and LOMON BRUNSON, an<br/>individual,</b><br><br><b>Plaintiffs</b><br><br><b>v.</b><br><br><b>MONTGOMERY BOROUGH,<br/>ALFRED POFF and JOHN DOE,</b><br><br><b>Defendants</b> | <b>NO. 4:15-cv-01673</b><br><br><b>JUDGE MATTHEW W. BRANN</b><br><br><b>CIVIL RIGHTS (42 U.S.C. §1983)</b><br><br><b>JURY TRIAL DEMANDED</b><br><br><b>(Electronically Filed)</b> |
|--|---|

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES**

Defendants, by and through their counsel, James F. Malloy, Esquire, respond to Plaintiffs' Complaint as follows:

1.-2. Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations.

3. Admitted.

4. Admitted, except as to tense. Mr. Poff is deceased.

5. Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations.

6.-8. Denied. The allegations are denied as conclusions of law to which no response is necessary.

9. Admitted, except as to tense. Defendants are unsure if the business is

open.

11.[sic] Denied. The allegations are denied as conclusions of law to which no response is necessary.

12.-13. Admitted.

14.-17. Denied. The allegations are denied as conclusions of law to which no response is necessary.

18. Admitted.

19. Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations.

20. Denied. The allegations are denied as conclusions of law to which no response is necessary.

## **COUNT I**

21. This is a paragraph of incorporation to which no response is required. To the extent a response is deemed to be necessary, Defendants hereby incorporate by reference the responses set forth in paragraphs 1 through 20 as though same were fully set forth herein at length.

22. Denied. The allegations are denied as conclusions of law to which no response is necessary.

23. Denied. The allegations in this paragraph and subparagraphs are denied as conclusions of law to which no response is necessary.

24.-27. Denied. The allegations are denied as conclusions of law to which no response is necessary.

WHEREFORE, Defendants request that judgment be entered in their favor and against Plaintiffs, plus costs.

## **COUNT II**

28. This is a paragraph of incorporation to which no response is required. To the extent a response is deemed to be necessary, Defendants hereby incorporate by reference the responses set forth in paragraphs 1 through 27 as though same were fully set forth herein at length.

29.-32. Denied. The allegations are denied as conclusions of law to which no response is necessary.

WHEREFORE, Defendants request that judgment be entered in their favor and against Plaintiffs, plus costs.

## **COUNT III**

33. This is a paragraph of incorporation to which no response is required. To the extent a response is deemed to be necessary, Defendants hereby incorporate by reference the responses set forth in paragraphs 1 through 32 as though same were fully set forth herein at length.

34.-36. Denied. The allegations are denied as conclusions of law to which no response is necessary.

WHEREFORE, Defendants request that judgment be entered in their favor and against Plaintiffs, plus costs.

**FIRST AFFIRMATIVE DEFENSE**

The claims of Plaintiffs may be barred and/or limited by the applicable Statutes of Limitations and/or Repose.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs have failed to set forth a cause of action upon which relief can be granted against Defendant.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' alleged damages may have been caused by others over whom the answering Defendant had no control.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' alleged damages were caused in whole or in part, or were contributed to, by Plaintiffs.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs may have this claim diminished or barred for failure to mitigate damage.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff s may have this claim diminished or barred due to spoliation of the

evidence.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Defendants incorporate by reference and pleads all applicable contracts and all applicable standards and codes.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Pursuant to F.R.C.P. 8(c), the following affirmative defenses are pleaded: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, and waiver.

#### **NINTH AFFIRMATIVE DEFENSE**

To the extent Plaintiffs' claims are based on the doctrine of *respondeat superior*, such claims are barred because the doctrine of *respondeat superior* is not a basis for recovery under 42 U.S.C. § 1983.

#### **TENTH AFFIRMATIVE DEFENSE**

To the extent Plaintiffs request monetary relief, Defendants are protected from liability and suit by Eleventh Amendment immunity and the doctrine of qualified immunity.

WHEREFORE, Defendants, reserving the right to amend this Answer in order to assert any additional affirmative defenses which may be uncovered or made known during the pendency of this case, request that judgment be entered in their favor and against all other parties, plus costs.

Respectfully submitted:

LAW OFFICES OF KATHLEEN A. WALSH

s/James F. Malloy

James F. Malloy, Esquire  
Attorney I.D. No. 69043  
Professional Arts Bldg., #606  
327 N. Washington Avenue  
Scranton, PA 18503  
Attorney for Defendants

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

|  |   |
|--|---|
| <b>LRB'S COUNTRY ROAD HOUSE,<br/>LLC, and LOMON BRUNSON, an<br/>individual,</b><br><br><b>Plaintiffs</b><br><br><b>v.</b><br><br><b>MONTGOMERY BOROUGH,<br/>ALFRED POFF and JOHN DOE,</b><br><br><b>Defendants</b> | <b>NO. 4:15-cv-01673</b><br><br><b>JUDGE MATTHEW W. BRANN</b><br><br><b>CIVIL RIGHTS (42 U.S.C. §1983)</b><br><br><b>JURY TRIAL DEMANDED</b><br><br><b>(Electronically Filed)</b> |
|--|---|

**CERTIFICATE OF SERVICE**

I, James F. Malloy, Esquire, certify that I served a true and correct copy of the foregoing Answer and Affirmative Defenses to Plaintiffs' Complaint upon the following person(s) listed below by U.S. First Class Mail on the 18<sup>th</sup> day of November, 2015:

Keith E. Kendall, Esquire  
Scaringi & Scaringi, P.C.  
20 North Hanover St., #201  
Carlisle, PA 17013

s/James F. Malloy  
James F. Malloy, Esquire